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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,367	04/26/2007	Dieter Ramsauer	STR-1014/500638.20036	8433

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REED SMITH, LLP
ATTN: PATENT RECORDS DEPARTMENT
599 LEXINGTON AVENUE, 29TH FLOOR
NEW YORK, NY 10022-7650

EXAMINER

FULTON, KRISTINA ROSE

ART UNIT	PAPER NUMBER
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3673

MAIL DATE	DELIVERY MODE
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11/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,367	Applicant(s) RAMSAUER, DIETER	
	Examiner KRISTINA R. FULTON	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) 22, 24 and 31-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/26/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of species II, claims 23, 25-30 and 34 in the reply filed on 9/30/09 is acknowledged. Claims 22, 24, 31-33 and 35-42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Further, claim 34 depends from a withdrawn claim and is therefor withdrawn. Claims 23 and 25-30 are examined below. Claims 1-21 are cancelled. Claims 22, 24 and 31-42 are withdrawn.

Information Disclosure Statement

1. US patent 5445159 appears to be incorrectly listed on the IDS. US 5445159 is a Patent entitled "Minimally Invasive Method to Determine the Left Ventricular Pressure Waveform" to Cheng. Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings should include reference numbers to clarify the view and content of the figure. Many of the figures do not include any reference numbers such as figures 10B, 11, 21-23B, 36-37... There are several other figures without reference numbers that should be corrected. The examiner trusts applicant will correct all necessary figures.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

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number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 23 and 25-30 are provisionally rejected on the ground of nonstatutory double patenting over claims 28-29 and 31-34 of copending Application No. 10/590638 and claims 44 and 52 of copending application no 10/587352. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a latch having a head part, body part, and sliding holding elements (please note that plates are considered slides since the plates perform a sliding motion).

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 23 and 25-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

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invention. Claims 23 and 26 require the slides "to be arranged so as to be displaceable in a cylinder". It is unclear how the slides are within the cylinder. Figures 1a and 1b show the elected embodiment but do not show the slides being displaceable within a cylinder. Further it is unclear how the slides of the elected species have a locking pin arrangement between slides including a screw or how such a screw controls the holding elements as claimed. Further, the dividing wall, undercut or opening edge of the cylinder is not disclosed or clearly illustrated in the figures to clearly understand the scope of claims 29-30. Appropriate clarification and correction is required.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 23 and 25-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Regarding claim 25 it is unclear how the holding elements are flexible but then made of rigid material as claimed in 25.

10. Regarding claims 23 and 26, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

11. Claims 23 and 26 recite the limitation "the outer rim of the opening". There is insufficient antecedent basis for this limitation in the claim.

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12. Claims 23 and 26 recite the term "its". The use of pronouns should be avoided and "its" should be replaced with the component for which it represents for clarity. The claims have been examined "as best understood".

Claim Rejections - 35 USC § 102

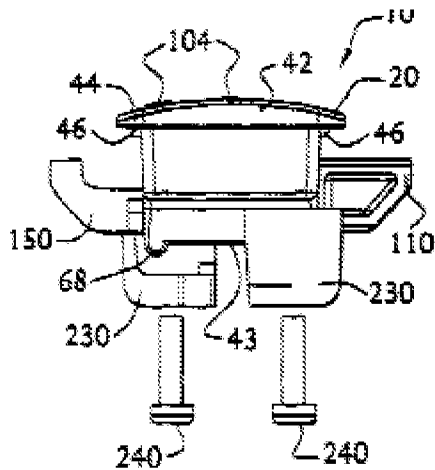
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 23 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Vickers (US 6145352).

14. Regarding claims 23 and 26, Vickers teaches a latch having a head part (42) arranged outside a thin wall, a body part (20 below 42) which proceeds from the head part and projects through the opening in the mounted position, holding elements (110 and 150) which project from the body part and are flexible in a direction, a free end of the holding elements being provided with an inclined surface (see figure 3), the body part and the holding elements being separate parts and the holding elements being slides. Please note "as best understood" for the last limitation of claims 28 and 31 and claim 34, Vickers shows a lock cylinder (200) associated with holding elements (110 and 150). As best understood, Vickers shows the slides are held against a pressure spring force (198) by a hook arrangement (tabs and slots seen in figures 9 and 10).

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Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 25 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vickers as applied to claim 31 above and further in view of Anderson (US 5251467).

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18. Regarding claim 25, Vickers fails to disclose the material of the holding elements.

It is within the level of ordinary skill to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. See 112 rejection above.

19. Regarding claims 27-28, Vickers shows applicant's inventive concept of a latch with sliding holding elements but fails to show screws screwed into the head arrangement to regulate movement of the holding elements but Anderson shows this to be well known in the art. Anderson shows a screw (37) entering through a head arrangement which regulates the extent of movement of the holding elements 25 by holding spaces 35 against cam 41. Using screws to secure the sliding members of Vickers as taught by Anderson would have been obvious to one of ordinary skill in the art since replacing one known securing means (tab and slot of Vickers) with another known securing means (screw of Anderson) is considered to be within the level of ordinary skill in the art and would yield predictable results since the screw of Anderson has proven useful as a securing means in the prior art.

20. Regarding claims 29 and 30, these claims are extremely unclear and will be given considerable weight when the 112 issues above are clarified. Currently, as best understood, Vickers shows a fastener with a cylinder and slides as holding elements.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTINA R. FULTON whose telephone number is (571)272-7376. The examiner can normally be reached on M-TH 7-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter M. Cuomo/
Supervisory Patent Examiner, Art Unit 3673

/K. R. F./
Examiner, Art Unit 3673
11/18/09